



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

February 21, 2019

Mr. Ken A. Smith
U.S. Coast Guard (CG-OES-2)
Vessel and Facilities Operating
2703 Martin Luther King, Jr. Avenue S.E.
Washington, DC 20593-7509

Subject: EPA Authority Over Construction and Operation
Texas COLT Deepwater Port Act Project

Dear Mr. Smith:

EPA Region 6 received a copy of the Deepwater Port Act (DPA) license application package for Texas COLT (COLT) crude oil export terminal on February 7, 2019, and provides these comments to assist the United States Coast Guard / Maritime Administration (USCG / MARAD) and their contractors as the agencies determine the administrative completeness of the DPA license application package and initiate scoping for the Environmental Impact Statement (EIS) under the DPA and the National Environmental Policy Act (NEPA). The overall project will consist of three distinct, but interrelated components: 1) the "offshore" component, 2) the "inshore" component, and 3) the "onshore" component.

The proposed deepwater port (offshore component) would be located approximately 28 nautical miles south of Freeport, TX (Brazoria County) and consists of approximately 32 miles of new 42-inch outside diameter crude oil pipeline, which terminates at an offshore staffed platform and control center. Separate 42-inch outside diameter crude oil pipelines will extend from the offshore platform to two (2) single point mooring (SPM) buoys, each with two (2) 24-inch floating loading hoses. The SPM buoy system would be positioned in water depths of approximately 110 feet and consist of a pipeline end manifold, catenary anchor leg mooring system, and other associated equipment.

The inshore components associated with the proposed project include approximately 8 miles of new 42-inch outside diameter pipeline and onshore valves used to connect the onshore project components to offshore project components. The inshore portions of the proposed pipeline infrastructure cross the Gulf Intracoastal Waterway, and extend underneath Bryan Beach Park to the mean high tide line located at the interface of Bryan Beach Park and the Gulf of Mexico.

Onshore components associated with the proposed project include the construction and operation of an onshore storage terminal facility (OSTF), pump station, and three (3) lateral connecting inbound pipelines. The Texas COLT Gray Oak Connector Pipeline will include approximately 28

miles of new 30-inch outside diameter pipeline and associated facilities within Brazoria County, from Sweeny Junction to the Texas COLT OSTF. The Texas COLT Genoa Pipeline will include approximately 60 miles of 24-inch outside diameter pipeline and associated facilities located within Harris, Galveston, and Brazoria counties, from Genoa Junction to the Texas COLT OSTF. The Texas COLT Seaway Pipeline Connection will include approximately 1 mile of bi-directional, 30-inch outside diameter pipeline and associated facilities located with Brazoria County, between the Seaway Jones Creek Crude Oil Terminal and the Texas COLT OSTF. The OSTF would occupy approximately 245 acres in Brazoria County, and would consist of all necessary infrastructure to receive, store, measure, and transport crude oil through the proposed inshore and deepwater port pipeline infrastructure.

EPA Region 6 appreciates this opportunity to provide the following information to the Coast Guard and Maritime Administration as part of the coordinated licensing effort for this facility.

We reviewed the COLT documents and have determined that the applications for EPA Clean Air Act permit actions are administratively complete in that all of the required EPA forms and certifications were included. However, there are issues with the Clean Water Act permit application (see below). In addition to the comments below, we reserve the right to request additional information as we more fully examine the permit applications and begin to develop Agency decisions regarding permits for the proposed facility. The NEPA and cross-cutting statutes and regulatory consultation documents need to be sufficient for our use in our regulatory permit actions. EPA would appreciate the opportunity to participate in the consultations as an action agency.

CLEAN WATER ACT. Due to the nature of the delegation of the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permit authority in Texas, EPA Region 6 is the NPDES permitting authority for the project, including onshore, inshore, and offshore discharges.

The Crude Offshore Loading Terminal (COLT) license application received by EPA Region 6 included a copy of the NPDES permit application forms. In accordance with the applicable Environmental Permit Regulations, (40 CFR 124.3(c), 54 FR 18785, May 2, 1989) this information was reviewed and determined to be administratively incomplete. During the technical analysis of the application, other deficiencies may be determined and a request for additional or clarifying information will be made to the applicant.

- 1) 40 CFR 122.21(g)(7) requires that the facility provide effluent characteristics from all the Outfalls. Since the facility has not had any discharges, estimated sample results based on Best Professional Judgment for the pollutants listed at 40 CFR 122, Appendix D, Tables III and IV, plus pH, hardness, TDS, TSS, Chloride and Sulfate. These pollutants are also contained in the 2018 EPA-approved Texas Water Quality Standards, Texas Administrative Code (TAC), 30 TAC Sections 307.1 - 307.9, effective November 2, 2018. Estimates of these pollutants should not be recorded as "To be determined" as stated in the NPDES permit application. These pollutant estimates are not required if believed absent in the effluent.

- 2) Outfalls found in the application were incorrectly designated as Outfall TERM-001, 0D-001, DWP-001 etc. The correct designation should be in the form of 001, 002, 003 etc. Internal Outfalls should be designated as 101, 102, 103 etc. This is because our current database can only accept number designation in the above stated format.

Because the Deepwater Port Act (DPA) designates the proposed type of facility a “new source” for CWA purposes, EPA will consider the information in the MARAD/Coast Guard’s EIS and consultation documents in its NPDES permit action in accordance with CWA § 511(c)(1) and DPA § 5(f). Of particular interest will be the conclusion of consultations with the National Marine Fisheries Service and/or U.S. Fish and Wildlife Service for compliance with the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act; including effects on fish, shellfish, and threatened and endangered species, in all life stages, caused by the construction and operation of the facility. EPA is also intending to rely on the consultations with Advisory Council on Historic Preservation and the Texas Historical Commission for compliance with the National Historic Preservation Act.

CLEAN AIR ACT. EPA does not normally administer the Clean Air Act (CAA) in the western Gulf of Mexico because under CAA Section 328, the Department of Interior’s Bureau of Ocean Energy Management is responsible for regulating outer continental shelf (OCS) sources, as defined in the Outer Continental Shelf Lands Act, in that area. As presented in the application, the proposed source is not an OCS source, so Section 328 does not apply. Instead, EPA is the CAA permitting authority for non OCS facilities in federal waters. EPA regards a provision of the DPA, 33 U.S.C. § 1501, *et seq*, as the primary source of its authority to apply the CAA to activities associated with deepwater ports. The DPA applies federal law and applicable State law to deepwater ports, and further designates deepwater ports as “new sources” for CAA purposes. Accordingly, for the source’s pre-construction and operating permits, EPA will rely on the provisions of Title 1 and Title V of the CAA, supporting applicable regulations and on the state’s law to the extent applicable and not inconsistent with federal law. EPA will also consider the information in the MARAD / Coast Guard’s EIS and consultation documents in its CAA permit actions, and in particular will rely on the MARAD / Coast Guard’s consultations with the National Marine Fisheries Service and/or U.S. Fish and Wildlife Service for compliance with the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act as well as consultations with the Advisory Council on Historic Preservation and the Texas Historical Commission for compliance with the National Historic Preservation Act.

The applicant asserted that the nearest adjacent coastal state to the operation is Texas, based on the location of the terminal. EPA concludes that, in accordance with Section 19 of the DPA, the applicable state laws and regulations governing air quality at COLT are those of Texas.

Based on our recent discussions with Kinder Morgan COLT representatives, EPA has not yet received an official application from COLT for the required prevention of significant deterioration (PSD) and title V operating permits, but we do expect one at a future date based on those discussions. Therefore, we have not completed a detailed review of the draft permit applications, or the supporting modeling analysis included in Appendix II.C and Appendix II.I of the DWP License application for administrative or technical completeness. Since we note that the

application in the DWP license application is marked draft, we will hold off on making our completeness determination on the air permit applications pursuant to the CAA until we receive their official applications at a future date and have an opportunity to review them at that time. After EPA completes its administrative and technical review of those applications, additional information may be requested in writing or through meetings with the applicant. We reserve the right to inform the applicant that their air permit related applications are incomplete pursuant to each set of CAA implementing regulations the applicant will officially apply under.

MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT. Under Section 101 of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), 33 U.S.C. § 1401, no person may transport material from the United States or on an American flagged vessel for the purpose of dumping it in ocean waters in the absence of a permit issued by EPA pursuant to MPRSA § 102. A MPRSA §102 permit is also required for any person transporting material from anywhere for the purpose of dumping it in the territorial seas or to the contiguous zone where it might affect the territorial seas.

Based on our current understanding, it does not appear that this proposal includes transporting materials for the purpose of dumping it in connection with the construction or operation of the COLT facility. Moreover, "dumping" does not include "construction of any fixed structure or artificial island nor the intentional placement of any device in ocean waters, or on or in the submerged land beneath such waters, for a purpose other than disposal, when such construction or such placement is otherwise regulated by Federal or state law . . ." MPRSA § 3(f). The construction of this deepwater port appears to fall within this statutory exclusion. However, if this understanding is not correct or if dredged materials associated with the construction/placement of the offshore platform, SPM facilities and pipelines require disposal, MPRSA Sections 101 and 103 may apply, as well as provisions of the Clean Water Act.

Also, if you should need further information about the Region 6 program for Ocean Disposal, please feel free to visit our website at: <https://www.epa.gov/ocean-dumping/managing-ocean-dumping-epa-region-6> or an overview of the entire program nationally at: <https://www.epa.gov/ocean-dumping>

COASTAL AND WETLAND RESOURCES. As we currently understand the project, it would involve the construction and operation of an onshore storage terminal facility (OSTF) occupying approximately 245 acres in Brazoria County, pump station, and three (3) lateral connecting inbound pipelines totaling approximately 90 miles of new construction within Harris, Galveston, and Brazoria counties; approximately 8 miles of new 42-inch outside diameter pipeline and onshore valves used to connect the onshore project components to offshore project components; and approximately 32 miles of new 42-inch outside diameter crude oil pipeline, which terminates at an offshore staffed platform and control center. Separate 42-inch outside diameter crude oil pipelines will extend from the offshore platform to two (2) single point mooring (SPM) buoys, each with two (2) 24-inch floating loading hoses. The SPM buoy system would be positioned in water depths of approximately 110 feet and consist of a pipeline end manifold, catenary anchor leg mooring system, and other associated equipment.

These project components, taken individually and considered cumulatively, could have significant impacts to vital coastal and wetland resources. Therefore, all necessary measures should be taken to avoid such impacts to the degree possible and to mitigate or compensate for those that cannot be avoided. Beyond compliance with the National Environmental Policy Act and the Clean Water Act, there is also a need to ensure that the proposed project is consistent with federal and State efforts to restore coastal resources. Accordingly, all practicable efforts should be taken to ensure that the proposed project does not conflict with reasonably foreseeable future restoration efforts in the proposed project area. Special attention should be given to alternative plans currently being analyzed as part of the Texas Coastal Restoration and Protection Feasibility Study (U.S. Army Corps of Engineers), the Texas Coastal Resiliency Master Plan (Texas General Land Office), and any proposed projects under the Deepwater Horizon Natural Resource Damage Assessment and RESTORE Act programs.

The impacts from the construction, operation and maintenance of the deepwater port and its ancillary facilities, including dredging and any projected impacts to wetlands and special aquatic sites (including seagrass beds), are of particular interest to us and should be analyzed in the draft Environmental Impact Statement (EIS). A thorough evaluation should be presented in the draft EIS that demonstrates planning efforts to avoid, minimize, and compensate for wetland and special aquatic site losses associated with the construction, operation and maintenance of the proposed project. Impacts to aquatic resources and wetlands should include direct, indirect and cumulative effects reasonably associated with the proposed project. Along with the Clean Water Act Section 404 (b)(1) analysis, all unavoidable direct and indirect impacts would need to be compensated. We recommend that an aquatic resource and wetland mitigation plan, consistent with the 2008 Final Rule for Compensatory Mitigation for Losses of Aquatic Resources, be included within the draft EIS. Please note that providing this material after public review of the draft EIS does not allow optimum analysis of the entire range of significant potential environmental impacts.

In addition, the draft EIS should address any other projected marine and coastal natural resource impacts such as losses of habitat important to resident and migratory shorebirds and sea turtles, the introduction of invasive species, bottom scour and benthic community impacts from the mooring system, and marine pollution issues.

NATIONAL ENVIRONMENTAL POLICY ACT. EPA Region 6 desires to be a cooperating agency in the development of the EIS by MARAD and USCG. A formal invitation for cooperating agency status should be addressed to the Region 6 NEPA program to the attention of Robert Houston. Additionally, Section 309 of the Clean Air Act requires EPA to review EISs prepared by other agencies. This review will be coordinated by the Region 6 NEPA office.

MARAD/USCG should submit the EIS to EPA through the e-NEPA electronic filing system. Filing instructions are available on EPA's NEPA website at <https://www.epa.gov/nepa/environmental-impact-statement-filing-guidance>


Please provide an additional copy of both draft and final EISs to EPA Region 6 for consideration in its NPDES permit action.

POINT OF CONTACT. I will be the primary EPA point of contact for communications on the COLT project. Correspondence should be directed to me as follows:

Robert D. Lawrence
Senior Policy Advisor – Energy Issues
EPA Region 6
1445 Ross Avenue (6MM-A)
Dallas, TX 75202
(214) 665-6580

Once again, EPA Region 6 looks forward to working with the Coast Guard and Maritime Administration on this project.

Sincerely yours,

A handwritten signature in black ink that reads "Robert D. Lawrence". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Robert D. Lawrence
Senior Policy Advisor - Energy Issues

cc: Ms. Kimberly Baggett
US Army Corps of Engineers, Galveston, TX

Ms. Terri Thomas
Bureau of Ocean Energy Management, New Orleans LA

Dr. Roy E. Crabtree
NOAA National Marine Fisheries Service, St. Petersburg, FL

Mr. Chuck Ardizzone, Project Leader
U.S. Fish & Wildlife Service, Houston, TX

Ms. Yvette Fields
Maritime Administration, Washington, DC

Ms. Cathryn C. Hanson, Supervisor
Environmental Projects
Texas COLT LLC., Houston, TX